

In The Matter Of:

MARC S. KIRSCHNER, ET AL.

v.

PHILLIP R. BENNET, ET AL.

NATHANAËL BENZAKEN 30(b)(6) - Vol. 1

October 21, 2011

MERRILL CORPORATION

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re REFCO, INC. SECURITIES
LITIGATION 07-MDL-1902
(JSR)

-----x
MARC S. KIRSCHNER, as Trustee of the
Refco Private Actions Trust,

Plaintiff,

-against- Case No. 07-CV-8165
(JSR)
PHILLIP R. BENNET, et al.,

Defendants.

-----x
GRANT THORNTON LLP,

Defendant/Third-Party Plaintiff,

-against-

THOMAS H. LEE PARTNERS, L.P., et al.,

Third-party Defendants.

-----x
October 21, 2011

9:36 a.m.

Videotaped 30(b) (6) deposition of
LYXOR/BEACH DISCRETIONARY FUND LIMITED and
LYXOR/ESTLANDER & RONNLUND FUND LIMITED by
NATHANAËL BENZAKEN, at the offices of
Winston & Strawn LLP, 200 Park Avenue, New
York, New York, before Gail F. Schorr, a
Certified Shorthand Reporter, Certified
Realtime Reporter and Notary Public within
and for the State of New York.

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<p>1 NATHANAËL BENZAKEN 2 In the case of Beach 3 Discretionary, it's certainly more 4 difficult for me to answer that question 5 as I wasn't in charge of analyzing or 6 supervising the fund in particular.</p> <p>7 Q. Did you play any role in the 8 decisionmaking with respect to which 9 brokerage firms the funds would use for 10 their FX trading?</p> <p>11 A. For those two?</p> <p>12 Q. Yes.</p> <p>13 A. When I took over on Feb 1st 14 the two funds were already set up, so I 15 had no involvement in picking the 16 counterparty.</p> <p>17 Q. They were set up with Cargill?</p> <p>18 A. That's correct.</p> <p>19 Q. Specifically CIS Financial 20 Services; is that your understanding?</p> <p>21 A. The precise name of the entity 22 it sounds familiar.</p> <p>23 Q. Did you ever read audit 24 reports prepared by the outside auditors 25 of the brokerage firms with which the</p>	<p>Page 46</p> <p>1 NATHANAËL BENZAKEN 2 Q. At any time? 3 A. We had discussion in 2008 4 where some managers told us they were 5 concerned by Bear Stearns. On what 6 basis, I can't say. 7 Q. That they were concerned by 8 what, I'm sorry? 9 A. Bear Stearns. 10 Q. Bear Stearns, okay. That was 11 in 2008? 12 A. 2008. 13 Q. Prior to 2008, you can't 14 remember any discussion of audit reports? 15 A. I can't remember. 16 Q. Do you know whether the Lyxor 17 funds usually made spot trades or futures 18 trades when it comes to foreign currency 19 trading? 20 A. In general, they can do both. 21 In those two cases specifically, I can't 22 say for sure. At this -- unless that 23 obviously they did trade some forwards 24 with Cargill, forward contracts. 25 Q. You believe they used forward</p>
<p>Page 47</p> <p>1 NATHANAËL BENZAKEN 2 Lyxor funds invested? 3 A. I didn't, sir. I didn't. 4 Q. You did not? 5 A. Did not. 6 Q. To your knowledge, did any of 7 the fund managers, either internal or 8 external at Lyxor, typically read audit 9 reports that were prepared by the outside 10 auditors of the brokerage firms with 11 which they invested? 12 A. Given the high standards of 13 the organization I work with, as well as 14 the managers we select, the professional 15 in charge of monitoring counterparty 16 risk, I cannot believe that he didn't 17 look at the audited financial statements 18 of all the counterparties. 19 Q. Do you have any recollection 20 of any fund manager ever telling you that 21 he or she had reviewed an audit report 22 prepared by an outside auditor of the 23 brokerage firm with which they were 24 investing with FX? 25 A. At what time?</p>	<p>Page 49</p> <p>1 NATHANAËL BENZAKEN 2 contracts in addition to spot trading? 3 A. It's highly likely. 4 Q. Can you explain the different 5 types of FX trading to the ladies and 6 gentlemen of the jury? I don't think 7 I've had you do that yet. What is a spot 8 trade versus a forward contract, versus 9 futures trading, if you could? 10 A. As a disclaimer, I'm not an FX 11 trader. I never traded FX, as I told 12 you. And futures on FX is a -- is an 13 instrument trading, traded on an 14 organized exchange. 15 Forward is a -- is an unlisted 16 forward traded OTC, over the counter, so 17 on the basis of an ISDA contract, which 18 is a derivative agreement between the 19 counterparties and the fund. 20 And spot trading is buying and 21 selling the currency on the spot. 22 MR. DOYLE: Would you mark 23 this as Exhibit 3227. 24 (Deposition Exhibit 3227 for identification, document titled</p>

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<p style="text-align: right;">Page 98</p> <p>1 NATHANAËL BENZAKEN 2 have been the only company that the Lyxor 3 funds were doing FX trading with? 4 A. It's highly likely that it was 5 the sole company. 6 Q. You're certainly not aware of 7 any other companies? 8 A. Besides the fact that we ended 9 up with Refco afterwards, but that's it. 10 Q. Do you have any understanding, 11 sir, of the factors that contributed to 12 the decision to open accounts with 13 Cargill? I know it predated your 14 employment with Lyxor, but have you ever 15 discussed with anybody or through any 16 other source have you ever gleaned any 17 understanding of why they decided to use 18 Cargill? 19 A. I have no idea, sir. 20 Q. Aside from RCM, sir, have any 21 of Lyxor's brokerage firms experienced 22 financial difficulties, to your 23 knowledge? 24 A. Would you mind repeating the 25 question.</p>	<p style="text-align: right;">Page 100</p> <p>1 NATHANAËL BENZAKEN 2 Brothers. 3 Q. Before the transfer of the 4 Lyxor funds' FX trading accounts from 5 Cargill to RCM, had Lyxor ever had any 6 type of business relationship with Refco 7 or one of its subsidiaries? 8 A. We had in the past one 9 relationship if I recall correctly. One 10 managed account run by, called Lonestar 11 utilizing Refco as a broker. 12 Q. For what types of trading? 13 A. To be precise, certainly 14 around the futures trading as well as 15 currency trading, but I can't say for 16 certain. 17 Q. Can you put any time frame on 18 that? Do you know the date range during 19 which the Lonestar fund was utilizing the 20 services of Refco? 21 A. I think the Lonestar managed 22 account started sometime around 2003 and 23 if I recall correctly, my predecessor 24 closed it around 2005 -- 2004, 2004. 25 Q. Do you have an understanding</p>
<p style="text-align: right;">Page 99</p> <p>1 NATHANAËL BENZAKEN 2 Q. You're aware of the financial 3 difficulties of Refco that came to light 4 in October 2005, correct? 5 A. Correct. 6 Q. To your knowledge, have any of 7 the other brokerage firms that Lyxor has 8 used over the years experienced financial 9 difficulties? 10 MR. GOTTLIEB: Objection to 11 the form of that. If we're talking 12 about the two Lyxor companies I 13 think he only knew of Cargill or 14 CIS and perhaps Refco. So are you 15 asking him about Cargill and Refco? 16 Q. No, I was really -- I didn't 17 limit my question I don't believe to the 18 Lyxor funds. I was looking more broadly 19 at the various Lyxor funds beyond just 20 the two at issue in this case. 21 A. And during a specific period 22 of time or until now? 23 Q. Since you've been there? 24 A. Obviously we went through 25 interesting times during 2008 with Lehman</p>	<p style="text-align: right;">Page 101</p> <p>1 NATHANAËL BENZAKEN 2 as to why that account was closed? 3 A. Exactly the answer is no. We 4 were not necessarily very happy with the 5 performance most probably. 6 Q. What is your understanding 7 today of exactly when the Lyxor funds' FX 8 trading accounts were transferred to RCM? 9 A. Can you be specific with your 10 question? 11 Q. This question relates solely 12 to the two Lyxor funds that are at issue 13 in this case, and the question is what is 14 your understanding today? 15 A. Today. 16 Q. As to exactly when those 17 accounts transferred from Cargill to RCM? 18 A. If I recall correctly, the 19 deal closed end of August and I tend to 20 believe that the transfer or legal 21 transfer happened by then by virtue of 22 this negative consent letter that we -- 23 that I never saw, that the firm maybe 24 received. 25 Q. To your knowledge, sir, when</p>

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<p>1 NATHANAËL BENZAKEN 2 is the first time that anyone at Lyxor 3 realized that the Lyxor funds' FX trading 4 accounts had been transferred to RCM?</p> <p>5 A. This is impossible for me to 6 tell you. I don't know. It's a large 7 organization. This was brought to my 8 attention obviously when this situation 9 happened.</p> <p>10 MR. GOTTLIEB: I'm not sure -- 11 what situation?</p> <p>12 A. I mean the bankruptcy and 13 certainly the moratorium that was put in 14 place.</p> <p>15 MR. GOTTLIEB: Thank you.</p> <p>16 Q. So if I understand your 17 testimony, the public revelations in 18 October of 2005 that led to the Refco 19 bankruptcy were the first that you became 20 aware that these two Lyxor funds' FX 21 trading accounts had been transferred 22 from Cargill to RCM; is that correct?</p> <p>23 A. That's correct.</p> <p>24 MR. DOYLE: Can you please 25 mark this as whatever the next</p>	<p>Page 102</p> <p>1 NATHANAËL BENZAKEN 2 contained in the first two pages of this 3 exhibit in fact the negative consent 4 letters that you've referred to at 5 various times during your testimony so 6 far today?</p> <p>7 A. Can I -- can I go through it 8 again, do you mind?</p> <p>9 Q. Sure.</p> <p>10 A. Yes, it's certainly the 11 negative consent letter that I referred 12 to earlier.</p> <p>13 Q. Just to be clear, let me read 14 a little bit of this into the record, and 15 the first letter relates to account 16 number 93350 which is an account of the 17 Lyxor/Estlander & Ronnlund Fund, correct?</p> <p>18 A. It reads that way.</p> <p>19 Q. And the second letter, just 20 for the record, relates to account number 21 93352, which is an account of the 22 Lyxor/Beach Discretionary Fund, correct?</p> <p>23 A. This is what's written.</p> <p>24 Q. And the text of the letters is 25 identical, right?</p>
<p>Page 103</p> <p>1 NATHANAËL BENZAKEN 2 numbered exhibit is. 3 (Deposition Exhibit 3228 for 4 identification, Bates stamped 5 REFCO-S-0788872 through 74.) 6 Q. Mr. Benzaken, I'm showing you 7 what's just been marked as Exhibit 3228.</p> <p>8 MR. DOYLE: For the record, it 9 is a three-page document bearing 10 Bates numbers REFCO-S-0788872 11 through 74, and it actually 12 contains two different letters 13 dated August 15th, 2005 and then 14 some type of airborne shipments 15 record.</p> <p>16 Q. Have you seen these documents 17 before, sir?</p> <p>18 A. I think I saw them yesterday.</p> <p>19 MR. GOTTLIEB: Other than 20 that.</p> <p>21 A. I may have seen them when we 22 had to evaluate the situation, when the 23 problem were revealed to the market at 24 Refco, but I can't say for certain.</p> <p>25 Q. Are these two letters that are</p>	<p>Page 105</p> <p>1 NATHANAËL BENZAKEN 2 A. Well, unless I can compare 3 word by word, it looks like that.</p> <p>4 Q. Let me just read from the 5 letter for the Lyxor/E&R fund. It 6 states, "Dear customer: We wish to 7 advise you that CIS Financial Services, 8 Inc. has agreed to sell certain of its 9 assets to Refco Group Ltd., LLC, the 10 parent company of Refco Capital Markets 11 Ltd., effective as of the close of 12 business on August 31st, 2005. As a 13 result of this transaction, we propose to 14 transfer your account to RCM. 15 "Your account documentation 16 will be assigned to RCM on August 31st, 17 2005, unless you notify CISFS not to 18 effect such assignment and we actually 19 receive such notice at the CISFS address 20 listed below prior to 5 p.m. on August 21 26th, 2005."</p> <p>22 Have I read that correctly?</p> <p>23 A. You did.</p> <p>24 Q. If you look at the last page 25 of this document, it would appear that</p>

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<p style="text-align: right;">Page 106</p> <p>1 NATHANAËL BENZAKEN 2 these letters were sent overnight to the 3 Lyxor funds on August 16th, 2005. Do you 4 see that?</p> <p>5 A. I can see it. 6 (Witness and counsel confer.) 7 Q. So Cargill was attempting to 8 give the Lyxor funds approximately 10 9 days to object in writing to the transfer 10 of their accounts to RCM, is that your 11 understanding based on these letters?</p> <p>12 A. I'm sorry, would you mind 13 repeating the question.</p> <p>14 Q. Yes. These letters which I 15 just read from were sent to Lyxor on 16 August 16th, 2005, correct? According to 17 the shipment date?</p> <p>18 A. This is the date, this is the 19 date that's on this letter.</p> <p>20 Q. Lyxor's being told to respond 21 by August 26th, 2005 or this transfer is 22 going to occur, correct?</p> <p>23 A. This is how it reads.</p> <p>24 Q. So you're basically being 25 given 10 days to respond in writing if</p>	<p style="text-align: right;">Page 108</p> <p>1 NATHANAËL BENZAKEN 2 A. Never worked with him. 3 Q. And you can see that both of 4 these letters are in fact addressed to 5 him; is that correct? 6 A. This is what's written on the 7 letters. 8 Q. Do you see a fax track at the 9 top of the letters? 10 A. I do. 11 Q. And do you see the date of 12 that fax track? 13 A. October 20th, 2005. 14 Q. So it would appear based on 15 the document that somebody from Cargill 16 fax'd these letters to somebody at Lyxor 17 on October 20th, 2005; is that correct? 18 MR. RAND: Objection; form. 19 A. Certainly. 20 Q. Do you have any independent 21 knowledge of that? 22 A. Of the fact being receiving a 23 fax? 24 Q. Yes. 25 A. I can't recall for certain.</p>
<p style="text-align: right;">Page 107</p> <p>1 NATHANAËL BENZAKEN 2 you don't want your accounts transferred 3 from Cargill to RCM, right?</p> <p>4 A. This is the process as written 5 here.</p> <p>6 Q. Right. And my question, sir, 7 is do you believe that anybody at Lyxor 8 saw these letters in August 2005, anybody 9 who was still there?</p> <p>10 A. The thing is this letter was 11 sent to Raphael Faure, who wasn't with 12 the firm anymore at the time, so I can't 13 say for sure that this letter was 14 received by anyone. I haven't seen it 15 before October when the bankruptcy and 16 the moratorium started. That's the only 17 thing really I can tell you.</p> <p>18 Q. Who is Raphael Faure?</p> <p>19 A. I don't know.</p> <p>20 Q. So he's not -- do you know 21 when he left Lyxor?</p> <p>22 A. I don't know. He wasn't there 23 when I was there.</p> <p>24 Q. So he was not somebody that 25 you had worked with at the company?</p>	<p style="text-align: right;">Page 109</p> <p>1 NATHANAËL BENZAKEN 2 What I can say is that we -- when we find 3 out that the transfer happened without 4 our knowledge, we wanted to understand 5 and investigate what happened, and we 6 certainly asked for evidence of what 7 happened.</p> <p>8 Q. Do you know the identity of 9 the person at Cargill who faxed these 10 letters on October 20th, 2005?</p> <p>11 A. I don't.</p> <p>12 Q. Were you the person who 13 received this fax?</p> <p>14 A. I didn't.</p> <p>15 Q. Do you know who received this 16 fax?</p> <p>17 MR. RAND: Same objection. I 18 have a continuing objection 19 actually.</p> <p>20 A. I don't remember.</p> <p>21 MR. RAND: Go ahead.</p> <p>22 Q. I'm sorry, can you restate 23 your answer? Do you know who received 24 this fax?</p> <p>25 A. I don't.</p>

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<p>1 NATHANAËL BENZAKEN 2 organization is a large organization. I 3 had no reason to believe that the mail 4 has been sent got lost, but I can't say 5 for certain.</p> <p>6 Q. What do you recall occurring 7 with respect to any communications with 8 Cargill once it came to your attention in 9 October of 2005 after the problems at 10 Refco came to light that these accounts 11 had in fact been transferred to RCM?</p> <p>12 MR. GOTTLIEB: Would you 13 repeat that question.</p> <p>14 A. Please.</p> <p>15 Q. I just want to know, if I 16 understand your testimony, you didn't 17 know that these accounts had transferred 18 to RCM until October of 2005?</p> <p>19 A. That's correct.</p> <p>20 Q. When the financial problems at 21 Refco came to light?</p> <p>22 A. That's correct.</p> <p>23 Q. And what I'm trying to figure 24 out, to the extent you recall, is what 25 you did about it? Did you have</p>	<p>Page 114</p> <p>1 NATHANAËL BENZAKEN 2 anything, upon learning in October of 3 2005 that the FX trading accounts of 4 these two Lyxor funds had been 5 transferred from Cargill to RCM without 6 your knowledge?</p> <p>7 A. When I found out that we had 8 assets with Refco without knowing it, 9 without having signed any contract with 10 Refco, my, one of my colleagues, 11 Alexandre Labbe, tried to -- contacted 12 our contact there at CIS to ask the money 13 back because it wasn't supposed to be 14 with Refco, it was supposed to be with 15 CIS. And given the fact that no answer, 16 no answer came back, it was escalated to 17 me and I sent an email to our contact 18 there to basically get an explanation and 19 certainly get our money back.</p> <p>20 Q. And do you recall what you 21 were told by your colleague at Cargill?</p> <p>22 A. I'm sorry?</p> <p>23 Q. Did you say you sent an email 24 to someone at Cargill?</p> <p>25 A. To our contact who was</p>
<p>Page 115</p> <p>1 NATHANAËL BENZAKEN 2 communications with Cargill subsequently 3 about the fact that these accounts were 4 transferred to RCM unbeknownst to you?</p> <p>5 A. I don't understand the last 6 words of your question.</p> <p>7 Q. Without you knowing about it. 8 In other words, did you have conversations 9 with anybody at Cargill about the fact 10 that the Lyxor funds' FX accounts were 11 transferred from Cargill to RCM without 12 you knowing anything about it?</p> <p>13 MR. RAND: I just want to 14 object. I want to make sure 15 because of the nature of the 16 deposition, when you say you, so 17 the witness isn't confused, you're 18 talking about him personally?</p> <p>19 MR. DOYLE: I was talking 20 about him personally.</p> <p>21 MR. RAND: I just wanted to 22 make certain.</p> <p>23 A. I'm sorry, I'm going to ask 24 you to repeat the question again.</p> <p>25 Q. Sure. What did you do, if</p>	<p>Page 117</p> <p>1 NATHANAËL BENZAKEN 2 supposed to be our contact.</p> <p>3 Q. And do you remember what that 4 person said in response to your email?</p> <p>5 A. The exact content? No, I 6 don't remember.</p> <p>7 Q. Generally what was the 8 response?</p> <p>9 A. I -- I have an understanding 10 of what was the situation. I don't know 11 whether he -- what he actually replied to 12 me in specifically beside the fact that 13 obviously the money is with RCM and 14 cannot be wired back to us.</p> <p>15 Q. So is it correct to state, Mr. 16 Benzaken, that you were informed by 17 Cargill about the negative consent 18 letters, about the fact that the accounts 19 had transferred to RCM, and about the 20 fact that there was a trading moratorium 21 so that you were unable at that time to 22 access those funds?</p> <p>23 MR. FRIEDMAN: Objection to 24 form.</p> <p>25 A. By October?</p>

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1 NATHANAËL BENZAKEN 2 typically the type of agreement that we 3 expect to have signed with any of the 4 authorized counterparties the fund could 5 have dealt with. 6 Q. This particular agreement is 7 between CIS Financial Services on the one 8 hand, a Trustee of the Lyxor Master Fund 9 by the name of SG Hambros Trust Company 10 (Jersey) Limited and then Lyxor Asset 11 Management, which is the company you work 12 for, correct? 13 A. Correct. 14 Q. If you could turn to page 11 15 of this agreement and specifically at the 16 top of the page paragraph 7. Do you have 17 that in front of you? 18 A. I do. 19 Q. I'm not going to read this 20 word for word, but in relevant part this 21 paragraph 7 provides, "Neither this 22 agreement nor any interest or obligation 23 in or under this agreement may be 24 transferred, whether by way of security 25 or otherwise, by either party without the	1 NATHANAËL BENZAKEN 2 today about the document? 3 MR. DOYLE: I'm asking him 4 what the belief would have been at 5 the time within the company as a 6 30(b)(6) witness based on this 7 language. 8 MR. GOTTLIEB: That's a 9 hypothetical, okay. I object. 10 A. As a principle, the company 11 expects to always have a contract 12 negotiated and executed with any of the 13 counterparties, as a principle. 14 Q. And as a principle, does the 15 company also expect that as opposed to 16 the negative consent letters that were 17 used in this case, that it will have an 18 opportunity to and in fact must consent 19 in writing to the transfer of its 20 accounts to another party? 21 MR. GOTTLIEB: You're asking 22 about today or then? 23 MR. DOYLE: At the time. I 24 don't know that the answer would be 25 any different.
1 NATHANAËL BENZAKEN 2 prior written consent of the other 3 party." 4 Do you see that? 5 A. I can see that. 6 Q. Do you believe that this 7 language led Lyxor to believe that its 8 accounts could not be transferred to RCM 9 or anyone else without Lyxor's prior 10 written approval? 11 MR. RAND: Objection to form. 12 A. Can you repeat the question, 13 please. 14 Q. Yes. Do you believe that this 15 language that talks about obligations not 16 being transferred without the prior 17 written consent of the parties led Lyxor 18 to believe that its FX trading accounts 19 could not be transferred without Lyxor's 20 prior written approval? 21 MR. GOTTLIEB: Objection. Are 22 you assuming that he was looking at 23 this document, or Lyxor was looking 24 at this document at the time? Or 25 are you asking about what he thinks	1 NATHANAËL BENZAKEN 2 MR. GOTTLIEB: Neither do I, 3 that's why I asked when you were 4 asking. 5 A. Can you ask the question 6 again, please. 7 MR. DOYLE: Could you reread 8 my question. 9 (Record read as requested.) 10 A. This is a principle that I 11 think did apply and still applies. 12 Q. Lyxor obviously did not 13 provide any written consent for its FX 14 trading accounts to be transferred to RCM 15 in this case, correct? 16 A. I didn't. I don't know if 17 anyone did. 18 Q. To your knowledge, Mr. 19 Benzaken, did the Lyxor funds ever make a 20 conscious decision to have their FX 21 trading accounts transferred to RCM? 22 MR. GOTTLIEB: Objection to 23 form. 24 A. I didn't make that conscious 25 decision. I don't know if anyone else

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<p>1 NATHANAËL BENZAKEN 2 made that decision during the time it 3 happened.</p> <p>4 Q. You're not aware of anybody at 5 Lyxor having made an affirmative decision 6 to have the accounts transferred to RCM, 7 correct?</p> <p>8 A. I'm not aware of such a fact, 9 that's correct.</p> <p>10 Q. At any time prior to October 11 14, 2005, sir, did Lyxor or the Lyxor 12 funds do anything to investigate the 13 financial condition of either Refco or 14 RCM?</p> <p>15 A. It was, the question is 16 preannouncement of the problems at Refco 17 or --</p> <p>18 Q. Right.</p> <p>19 A. Pre. I didn't personally. 20 I'm not aware of anybody else did that.</p> <p>21 Q. At any time prior to October 22 14, 2005, did Lyxor or the Lyxor funds do 23 anything to investigate or analyze the 24 solvency or insolvency of Refco or RCM?</p> <p>25 A. When, I'm sorry?</p>	<p>Page 158</p> <p>1 NATHANAËL BENZAKEN 2 didn't even know that RCM was a 3 counterparty prior to October 2005, 4 correct?</p> <p>5 MR. RAND: Objection; form.</p> <p>6 A. That's correct.</p> <p>7 Q. So based on that, do you have 8 an understanding as to whether or not 9 anybody within Lyxor would have done 10 anything to analyze or investigate or 11 research the solvency of Refco or RCM 12 prior to mid-October 2005?</p> <p>13 A. Why we would have done that? 14 We had -- we were not aware of being 15 exposed to Refco. Why would we have done 16 that particular research, unless there 17 was something in the press that could let 18 us see something was happening there and 19 as a matter of information we were always 20 want to check whether we have direct or 21 indirect exposure to any problems 22 happening in the market.</p> <p>23 Q. You're not aware of any 24 problems or potential problems happening 25 in the market with respect to Refco until</p>
<p>Page 159</p> <p>1 NATHANAËL BENZAKEN 2 Q. Any time prior to October 14, 3 2005?</p> <p>4 A. You're asking the question of 5 Lyxor or as a group?</p> <p>6 Q. Did Lyxor, and I'm 7 particularly interested in the Lyxor 8 funds, do anything to analyze the 9 solvency or insolvency of Refco or RCM?</p> <p>10 A. To be precise, the funds 11 cannot do anything of that. We were 12 acting as a sub-manager so it was 13 delegated to us as a function. That's 14 point number 1..</p> <p>15 Point number 2, we have a -- 16 we relied on Societe Generale 17 counterparty risk management to validate 18 the counterparty we deal with, and 19 therefore, as a consequence, their being 20 in charge of monitoring counterparties, 21 it was their responsibility to come to us 22 and say if something, anything could have 23 been wrong with any counterparty, 24 including Refco.</p> <p>25 Q. But in this case, sir, you</p>	<p>Page 161</p> <p>1 NATHANAËL BENZAKEN 2 October 2005, correct?</p> <p>3 A. I'm not aware of any problem 4 and if we were, we would have certainly 5 been made aware, but without knowing that 6 we had exposure.</p> <p>7 Q. When the FX trading accounts 8 were transferred to RCM did the Lyxor 9 funds know that Grant Thornton was RCM's 10 outside auditor?</p> <p>11 A. I didn't know.</p> <p>12 Q. Do you have any reason to 13 believe that anybody else within Lyxor 14 knew at the time of the transfer of the 15 accounts to RCM that Grant Thornton was 16 RCM's outside auditor?</p> <p>17 A. You're asking the question 18 when it happened supposedly contractually 19 by virtue of the negative consent?</p> <p>20 Q. Right. Which would have been 21 as we looked at some documents, August 22 31st, 2005 approximately?</p> <p>23 A. So the answer is likely that 24 we didn't know because we didn't even 25 know we had exposure to Refco at the</p>

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1 NATHANAËL BENZAKEN 2 were publicly available in 2005? 3 A. Say it again. 4 Q. Do you know whether Grant 5 Thornton's audit reports concerning RCM 6 were publicly available in 2005? 7 A. For which year, 2004? The, in 8 the auditor's letters? 9 Q. In the year 2005, right. 10 A. I'm assuming that they issue a 11 letter every year, so it was probably 12 available, but I don't know for sure. 13 Q. Are you aware that RCM was a 14 private company? 15 A. I don't know what the 16 implication are, but it was a company to 17 me. 18 Q. Do you know the difference 19 between a public and a private company in 20 terms of the reporting obligations that 21 need to be made? 22 A. I know that the vague 23 distinction, but certainly not the 24 reporting obligation that makes them 25 different.	1 NATHANAËL BENZAKEN 2 theory versus telling me what you know 3 occurred. 4 A. Absolutely. That's why I am 5 -- this is what I meant saying. 6 Q. I appreciate that. So what I 7 want to make sure is I understand to the 8 extent you know personally and speaking 9 on behalf of the Lyxor funds, to the 10 extent you're able to do so today as 11 their designee, do you know sitting here 12 today whether anybody making investment 13 decisions for the Lyxor funds had access 14 to and reviewed any Grant Thornton audit 15 report of RCM or Refco prior to 16 mid-October 2005? 17 A. I don't know for certain that 18 this happened. I know that they did a 19 review, SG counterparty risk management, 20 to the extent -- I'm sorry, I'm confused. 21 So I know for a fact that they did a 22 review. What they did to the review, 23 it's their job. As I said, I know what 24 best practices are. I can't say more 25 than that.
1 NATHANAËL BENZAKEN 2 Q. In response to some of my 3 earlier questions you talked about the 4 possibility that certain people at SG, 5 Societe Generale had reviewed audit 6 reports of Refco or RCM. 7 Do you even know whether the 8 audit reports of Refco or RCM prior to 9 mid-October 2005 were publicly available 10 to be reviewed by people in that 11 position? 12 A. I don't know exactly. What I 13 think I told -- what I think I said is 14 that part of the best practice to 15 evaluate the counterparty risk associated 16 to a certain counterparty to the extent 17 audited financial statements are 18 available, this is certainly on the to be 19 reviewed list. I think this is what I 20 said, at least what I meant. 21 Q. I'm glad you just said that 22 because I think maybe we were a little 23 confused or I was a little confused. 24 Because there's a difference between you 25 telling me what the best practice is in	1 NATHANAËL BENZAKEN 2 Q. But you don't know what 3 materials they had access to? 4 A. I have no idea. 5 Q. So if I understand your 6 testimony, you're unable to testify under 7 oath here today that somebody within 8 Lyxor or the Lyxor funds, or even within 9 Societe Generale actually reviewed any 10 Grant Thornton audit report of Refco or 11 RCM; is that correct? 12 A. I expect them to have done it 13 to the extent they are available, but I 14 can't say for certain it happened. 15 Q. And you don't know to what 16 extent they were available, right? 17 A. I don't know. 18 Q. Do you know, sir, whether 19 anything Grant Thornton did ever 20 influenced the Lyxor funds' investment 21 decisions with respect to FX trading back 22 in the 2005 time period? 23 A. Well, I think we were not 24 aware of being exposed to RCM, so as a 25 matter of fact, we couldn't have made any

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<p>1 NATHANAËL BENZAKEN 2 conscious decision based on any 3 statement. If we knew, though, that 4 there were some problems we would 5 certainly, didn't have exposure, we would 6 have moved our assets quickly. 7 Q. Just so I make sure I have an 8 answer to my question, you don't believe, 9 do you, sir, that anything Grant Thornton 10 did back in 2005 influenced any of the 11 Lyxor funds' investment decisions, 12 correct? 13 MR. GOTTLIEB: Could you 14 phrase that positively because 15 you're going to have a problem with 16 the word don't. 17 MR. DOYLE: I'll take that as 18 an objection to form and I'll try 19 to reput my question to you. 20 Q. To the best of your knowledge, 21 Mr. Benzaken, did Grant Thornton do 22 anything back in the 2004/2005 time frame 23 that influenced the investment 24 decisionmaking of the Lyxor funds with 25 respect to FX trading?</p>	<p>1 NATHANAËL BENZAKEN 2 A. The answer is no, we didn't 3 have any exposure to, I mean we're not 4 supposed to have exposure to RCM. 5 Q. And would your answer be the 6 same with respect to Refco? In other 7 words, back in 2005, did the Lyxor funds 8 ever rely in any way on the content or 9 information contained in Grant Thornton's 10 audit reports of Refco? 11 MR. RAND: Objection to form. 12 A. The answer is no, we -- the 13 answer is no. 14 Q. During that same year, 2005, 15 did the Lyxor funds ever rely on Grant 16 Thornton to keep them informed about the 17 financial condition of RCM? 18 A. Say that again. 19 Q. Yes. Back in -- 20 MR. GOTTLIEB: You're not 21 trying to be tricky, are you, by 22 asking the same question over and 23 over and over again? 24 Q. During that same year, 2005, 25 did the Lyxor funds ever rely on Grant</p>
<p>1 Page 175</p> <p>2 NATHANAËL BENZAKEN 3 MR. GOTTLIEB: Objection to 4 the form. 5 A. The answer is no. We were not 6 supposed to have exposure to RCM, so why 7 would we care? 8 Q. To the best of your knowledge, 9 in making their investment decisions back 10 in 2005 did the Lyxor funds ever rely in 11 any way on the content or information 12 contained in Grant Thornton's audit 13 reports of RCM? 14 A. Can you be specific in your 15 question, please. Or repeat it, please. 16 Q. I don't know that I can be any 17 more specific. I'm going to ask the 18 court reporter to read it back to you if 19 that's okay. 20 (Record read as requested.) 21 A. We didn't make any conscious 22 decision to invest with RCM. 23 Q. I'm not trying to be tricky 24 with the question. I know -- I'm not 25 trying to confuse you. I think the answer is no?</p>	<p>1 Page 177</p> <p>2 NATHANAËL BENZAKEN 3 Thornton to keep them informed about the 4 financial condition of RCM? 5 MR. RAND: Objection to form. 6 MR. GOTTLIEB: Objection. 7 A. At what time, exactly? 8 Q. In 2005, at any time. In 9 other words, the Lyxor fund was making FX 10 trades. Was it looking at any point in 11 time to Grant Thornton to keep them 12 apprised or informed about the financial 13 condition of RCM in the context of making 14 those trades? 15 A. So to my knowledge, we have no 16 exposure to Refco, that's point number 1. 17 Point number 2, this happened 18 by virtue of this negative consent letter 19 only on August 31st, 2005. So we had no 20 exposure beforehand, conscious exposure. 21 Why would we rely on any auditor's report 22 for a counterparty we have no exposure 23 to? 24 Q. Do you know anyone from Grant Thornton? 25 A. I know no one.</p>